environment. Therefore, no unacceptable health risk is associated with the Site.

EPA, with concurrence of the State, has determined that all appropriate Fund-financed responses under CERCLA at the Site have been completed, and that no further cleanup by responsible parties is appropriate. Therefore, EPA proposes the deletion of the Site from the NPL.

Dated: June 19, 1995.

Patrick M. Tobin,

Acting Regional Administrator, USEPA Region IV.

[FR Doc. 95–16419 Filed 7–5–95; 8:45 am]

BILLING CODE 6560–50–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

45 CFR Part 1160

RIN 3154–AAoo

Indemnities Under the Arts and Artifacts Indemnity Act

AGENCY: Federal Council on the Arts and the Humanities.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This Notice of Proposed Rulemaking advises the public that the Federal Council on the Arts and the Humanities is proposing to amend the regulations implementing the Arts and Artifacts Indemnity Act, as amended (20 U.S.C. 971–977) (the ''Act''). The principal change is to permit the indemnification of eligible items from the United States while on exhibition in this country in connection with an exhibition of eligible items from outside of the United States. The proposed rule also includes illustrations of exhibitions eligible for indemnification which are intended to provide further guidance to persons considering applying for the indemnification of an international exhibition. The proposed amendment is not intended to bring about a major shift in emphasis of the current policy or practice of the indemnity program.

This notice invites comments on the proposed amendment to the regulations. The Federal Council particularly invites comments from groups, individuals, and governmental agencies involved in the exhibition process, including museums, private insurers, and professional and scholarly organizations. The revised rules will be published in the **Federal Register** and will be included in guideline packages for prospective applicants and in Certificates of Indemnity.

DATES: Comments should be received by August 7, 1995.

ADDRESSES: Interested persons should submit ten copies of their written comments to the Federal Council on the Arts and the Humanities, c/o Alice M. Whelihan, Indemnity Administrator, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: Alice Whelihan, 202–682–5442.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Background

In 1975, the United States Congress enacted the Arts and Artifacts Indemnity Act which established an indemnity program administered by the Federal Council on the Arts and the Humanities (the ''Federal Council''). 20 U.S.C. Sections 971–977. The Federal Council is composed of the heads of nineteen federal agencies and was established by Congress, among other things, to coordinate the policies and operations of the National Endowment for the Arts, the National Endowment for the Humanities, and the Institute of Museum Services, including the joint support of activities. 20 U.S.C. Section 971.

Under the indemnification program, the United States Government guarantees to pay loss or damage claims, subject to certain limitations, arising out of exhibitions containing items determined by the Federal Council to be of educational, cultural, historical or scientific value the exhibition of which must be certified by the Director of the United States Information Agency as being in the national interest. In order to be eligible for indemnification, the objects must be on exhibition in the United States, or if outside this country preferably as part of an exchange of exhibitions.

B. Legislative History

On May 21, 1975, Senators Claiborne Pell (D, RI) and Jacob Javits (R, NY) introduced the Arts and Artifacts Indemnity Act as an amendment to the reauthorization of the National Foundation on the Arts and Humanities Act of 1965. According to the House Committee report, the purpose of the statute was ''to provide indemnities for exhibitions of artistic and humanistic endeavors, and for other purposes.'' [1] The Senate Committee stated that it believed that this purpose could be advanced ''through the exchange of cultural activities and sharing by nations of the world of their cultural institutions and national wealth and treasure.'' [2]

The broad purpose of the Act is echoed throughout the Act's language and legislative history. For example, in testifying at joint hearings before the House Subcommittee on Select Education and the Senate Special Subcommittee on Arts and Humanities, Nancy Hanks, Chairman, National Endowment for the Arts, stated:

> Cultural exhibitions and exchanges of high quality should be encouraged by the laws and policies of the United States Government. They are in the national interest because of the personal, aesthetic, intellectual, and cultural benefits accruing to every man, woman and child of this nation who has the opportunity to experience these beautiful and enlightening presentations. We believe that this country should do as much as any nation in the world to insure that these vitally important programs are strengthened.[3]

There was concern in Congress that such exchanges were impeded by prohibitively high insurance costs. The Senate noted that ''anywhere from half to two-thirds of the cost of an international exhibition is the cost of insuring the material to be exhibited.'' [4] Ronald Berman, Chairman of the Federal Council, testified that without indemnification provided in special legislation enacted by the 93rd Congress, the insurance costs in connection with several widely attended exhibitions would have been prohibitive.[5]

C. Regulatory Background

The Federal Council is the agency charged by Congress with the responsibility to administer the Arts and Artifacts Indemnity Act. In practice, the Indemnity Program is administered for the Federal Council by the Museum Program of the National Endowment for the Arts under the ''Indemnities Under the Arts and Artifacts Indemnity Act'' regulations (the ''Regulations''), which are set forth at 45 CFR Part 1160.

These Regulations have been promulgated, and amended from time to time, by the Federal Council pursuant to the express and implied rulemaking authorities granted by Congress to make and amend rules needed for the effective administration of the indemnity program. Among other things, Congress expressly granted to the Federal Council the authorities to establish the terms and conditions of indemnity agreements; to set

[1] *Id.*

[2] *Id.*

[3] H.R. Rep. No. 680, 94th Cong., 1st Sess., at 5.

[4] S. Rep. No. 289, 94th Cong., 1st Sess., at 1.

[5] H.R. Rep. No. 680, 94th Cong., 1st Sess., at 5.

application procedures; and to establish claim adjustment procedures. 20 U.S.C. Sections 971(a)(2), 973(a), 975(a).

For a number of years, the Federal Council has considered the desirability of amending the Regulations to permit the indemnification of U.S.-owned loans on exhibition in the United States in connection with certified international exhibitions. As currently drafted, the Regulations do not cover domestic objects on loan to an international exhibition in the United States. The Regulations provide, in pertinent part:

> An indemnity agreement made under these regulations shall cover:
> (1) Eligible items from outside the United States while on exhibition in the United States or
> (2) Eligible items from the United States while on exhibition outside this country, preferably when they are part of an exchange of exhibitions. 45 C.F.R. Section 1160.1

On February 25, 1993, during a lengthy discussion of the application of the National Gallery of Art for the indemnification of the exhibition ''Great French Paintings from the Barnes Foundation: Impressionist, Post-Impressionist and Early Modern,'' the Federal Council concluded that the eligibility criteria set forth in the Regulations were more narrowly drawn then required under the Act. While the Council approved the indemnification of the Barnes exhibition, which consisted of one foreign-owned object and 80 domestically owned objects, a Certificate of Indemnity ultimately did not issue because of legal uncertainties related to the Council's action under its current Regulations. To clarify eligibility issues for future actions, the Federal Council voted to amend its regulations.

After extensive discussion of the issue, the Federal Council resolved that the proposed amendment to the Regulations would significantly enhance its ability to provide the American public with the benefits of a high quality program of international exhibitions while not significantly increasing the exposure of the Federal government to pay loss or damage claims nor significantly adding to the administrative burdens or costs of the program.

The Federal Council concluded that widening the eligibility criteria under the Indemnity Program to include coverage of U.S.-owned objects in exhibitions that also include foreign-owned loans would provide an important benefit to U.S. cultural institutions and to the American public. Under the current guidelines, U.S.-owned loans may be indemnified only when exhibited abroad. The Federal Council concluded that if items from abroad are of educational, cultural, historical or scientific value, and their exhibition has been certified by the Director of the United States Information Agency as being in the national interest, thereby making them eligible for indemnification coverage, the U.S.-owned loans to the exhibition also should be eligible for indemnification.

The Federal Council stressed that the proposed amendment is not intended to bring about a major shift in the emphasis of the current policy or practice of the indemnity program. Under the proposed amended Regulations, indemnity coverage would continue to be available primarily for the exhibition of items coming from outside the United States. In determining whether to indemnify international exhibitions that also include U.S. loans, the Federal Council would continue to apply the same general standard of review—whether the exhibition taken as a whole is of educational, cultural, historical or scientific significance. However, to guard against potential abuses, the Federal Council will require that the foreign loans be an integral or essential component of the exhibition. Exhibitions consisting solely of domestic items would continue to be ineligible for indemnification.

The Federal Council concluded that because of the overall statutory cap on the program the proposed modification would not significantly increase the exposure of the Federal government to claims for loss or damage while providing important additional relief for U.S. borrowing institutions. Under the statutory cap, the Federal Council may not issue indemnity agreements covering losses of more than an aggregate of $3,000,000,000 at any one time. The cap—and thereby the total government exposure—remains the same whether the indemnity agreements cover foreign or domestic content. Moreover, the fact that coverage during international transit, the time of the greatest risk, would not be required for loans from the U.S. lending institutions greatly reduces the risk of additional losses.

The Federal Council further concluded that the proposed amendment would not cause a significant increase in either the number applications to the program or the administrative burdens associated with applying reviewing indemnification applications. This is the case because under the current practice, applicants already are required to include information on domestic loans in their applications, and indemnity panels consider the educational, cultural, historical or scientific value of both the domestic and foreign items in determining whether to indemnify an exhibition.

While the need to determine whether indemnification of the domestic content is appropriate would require an additional judgment made by the Federal Council, it is similar in character to the determinations already made by the Federal Council in determining the appropriateness of indemnification of foreign content moreover, the same options for technical assistance and resubmission would be available for the rejected applicant as are currently available.

On June 16, 1993, on the basis of these conclusions, the Federal Council reaffirmed its vote of February 25, 1993 to amend the Regulations to permit the coverage of domestic items in connection with international exhibitions in the United States. Specifically, the Federal Council approved a motion to promulgate regulations revising 45 CFR Part 1160.1 (''Purpose and Scope'') by adding the following language:

> (3) eligible items from the United States while on exhibition in the United States if the exhibition includes other eligible items from outside the United States.

On April 6, 1994, the Federal Council published in the **Federal Register** an advance notice of proposed rulemaking (ANPR) regarding the indemnification of eligible items from the United States while on exhibition in this country in connection with an exhibition of items from outside the United States. 59 FR 16162–64, April 6, 1994.

II. Discussion of Comments Received

In response to the ANPR, the Federal Council received thirty-four (34) comments. Thirty-one (31) comments were received from representatives of museums and galleries, both public and private, two comments were received from representatives of museum service organizations, and one comment was received from a federal agency. The museums submitting comments are located in fifteen states and the District of Columbia.

The vast majority of the commenters strongly supported the Federal Council's proposal to extend indemnification to eligible items from the United States while on exhibition in this country in connection with an exhibition of foreign-owned items. While the public comments include a broad range of issues, they can be

summarized under six general topics: (1) Scope of coverage of the proposed amendments, (2) organizing international exhibitions, (3) benefits to the museum community, (4) benefits to the public, (5) further guidance on eligibility, and (6) the role of the United States Information Agency.

(1) Scope of Coverage of Proposed Amendments

Two commenters requested that the Federal Council consider extending the proposed changes to the indemnity program to include indemnification of exhibitions even where there is no foreign loans, so-called ''full domestic indemnity.'' The Federal Council decided against pursuing full domestic indemnity at this time for a number of reasons. The principal reason involves the availability of administrative resources. Under a full domestic indemnity program, the Federal Council anticipates a dramatic increase the number of eligible exhibitions and, thereby, the number of applicants. Such an increase could not be accommodated by the resources currently available for the administration of the indemnity program.

(2) Organizing International Exhibitions

A number of commenters noted that the ''internationalization'' of collecting and exhibiting works of art has greatly increased. This trend, in the words of one museum director, has greatly increased the likelihood that ''major works by artists outside the United States will be owned by major museums and private collectors in the U.S.'' These commenters believed that indemnifying foreign works owned by American museums was consistent with the goals of the indemnity program to provide the public access to high quality international exhibitions. Further, some commenters suggested that it may be necessary to include items owned by U.S. institutions in order to organize a comprehensive international exhibition. Another commenter described how the proposed amendment might facilitate organizing international exhibitions: ''[B]y securing fine domestic loans, potential foreign lenders are encouraged to lend their works of art.''

(3) Benefits to U.S. Museums

Several commenters noted the proposed change would result in significant savings for American museums and galleries which are currently required to obtain private insurance for U.S. loans in connection with an indemnified international exhibition. At least two commenters stated that this benefit would come at little or no cost to the taxpayers because technological advances are making the preservation and transportation of art safer, thereby further reducing the already extremely low risk of claims. According to some commenters, the proposed change would not impose new administrative burdens on applicants because, under current guidelines, all applicants already must submit detailed information on both foreign and domestic loans. Under the current system, many commenters noted, museums often must expend scarce resources to prepare the same documentation for the Federal Council and private insurers.

(4) Benefits to the Public

A few commenters anticipated that the change in the Regulations would improve the quality of the exhibitions available to the public. One commenter said that allowing the indemnification of limited domestic content would remove any incentive for curators to choose an inferior foreign-owned work over a superior U.S.-owned work in order to effect a savings in insurance premiums. Thus, according to this commenter, the proposed amendment would have the added benefit of helping to ensure that all items selected for exhibition were chosen solely on the basis of educational, cultural, historical or scientific significance. Another museum director pointed out that providing limited domestic content indemnification would bring the United States closer to conformity with a number of other countries, such as Great Britain, which provide full domestic indemnification.

(5) Further Guidance on Eligibility Criterion

While a number of commenters were able to identify examples of exhibitions which, in all likelihood, would have qualified for indemnification under the revised rules, two commenters suggested the need for providing further guidance to persons considering applying for the indemnification of an international exhibition under the new eligibility criterion. Specifically, one commenter felt that the Federal Council should clarify the amount and/or character of the domestic items in an international exhibition that would be appropriate for indemnification under the amended Regulations. Another commenter stated that, without any additional guidance, the only exhibitions that would appear to be ineligible for indemnification would be those that do not include a single foreign-owned work. While this commenter did not propose any specific changes, another suggested specifying that only exhibitions which contain a ''majority'' of foreign-owned works would be eligible.

The Federal Council considered at length the question of whether to incorporate a strict percentage test within the new eligibility criterion. The Federal Council decided not to incorporate such a percentage test in the proposed rule. While the Federal Council acknowledges that a number of commenters believe that the proposed eligibility standard as published in the ANPR may be too nebulous, the Council felt strongly that adopting a rigid percentage test for domestic content in international exhibitions would prove to be too inflexible a tool to carry out the broad objectives of the statute.

At the same time, the Federal Council recognized that the proposed amendment, as published in the ANPR, may not provide sufficient guidance regarding the eligibility for indemnification of international exhibitions that incorporate U.S. loans. Accordingly, the eligibility criterion for such exhibitions published in this notice has been revised to provide that the foreign loans must be an integral or essential component of the exhibition as a whole. Put another way, the foreign loans must be necessary to accomplish the educational, cultural, historical or scientific objectives of the exhibition. A number of examples are included to clarify the application of this standard by the Federal Council. These examples are included solely for the purpose of providing general guidance, and applicants seeking advice with respect to specific exhibitions are encouraged to consult directly with the Administrator of the Indemnities Program early in the planning process.

(6) United States Information Agency

The United States Information Agency (''USIA'') commented that it had no objection in principle to extending indemnification to eligible items from the United States while on exhibition in this country in connection with foreign items if indemnifying such objects would not adversely effect the ability of the Federal Council to indemnify the foreign works. However, USIA questioned whether the Arts and Artifacts Indemnity Act permitted the Federal Council to enter into indemnity agreements for such exhibitions and the USIA to issue national interest certifications in connection with such exhibitions. After extensive discussions between the USIA and the Federal Council, USIA ultimately concluded that there was a reasonable basis for the Federal Council's position and that it

would defer to the Federal Council's interpretation of the Act. USIA also stated that it would issue national interest certifications consistent with its statutory responsibilities and the amended Regulations.

III. Section-by-Section Analysis

Section 1160.1 Purpose and Scope

The eligibility criteria, which currently appear in subparagraph (a) of Section 1160.1, have been moved to a new Section 1160.4. This change has been made because the Federal Council believed that the revised eligibility standards could be more accurately addressed and more easily located within a new, separate section rather than within the existing scope and purpose section.

Section 1160.4 Eligibility

Subparagraphs (a) and (b) are identical to the paragraphs as they appeared in the prior § 1160.1. Subparagraph (c), and the examples that follow, are new. As discussed more fully above, the proposed amendment would permit the indemnification of U.S. loans in connection with an international exhibition. The examples that follow are intended solely to provide general guidance to applicants regarding the scope of the proposed eligibility standard. However, the Federal Council will continue its practice of determining the eligibility for indemnification of specific exhibitions on the basis of a case-by-case review by an expert Indemnity Panel.

In general, coverage is available primarily for the exhibition of items coming from outside the United States. Under the proposed amendment, some items from the United States in such exhibitions may also be eligible for indemnification. For exhibitions in which items from outside the United States appear to have been included merely to obtain insurance relief for an exhibition consisting predominantly of items from the United States, coverage will be denied. In all cases, the foreign loans must be an integral or essential component of the exhibition as a whole.

IV. Regulatory Analyses

This rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 20, 1993.

As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities.

The Catalogue of Federal Domestic Assistance number for the Arts and Artifacts Indemnity Program is 45–201.

List of Subjects in 45 CFR Part 1160

Indemnity payments, National Foundation on Arts and Humanities.

For the Federal Council on the Arts and the Humanities.

Michael S. Shapiro,

Counsel to the Federal Council on the Arts and the Humanities.

For the reasons set forth in the preamble, 45 CFR Part 1160 is proposed to be amended as follows:

PART 1160—INDEMNITIES UNDER THE ARTS AND ARTIFACTS INDEMNITY ACT

1. The authority citation for part 1160 continues to read as follows:

Authority: 20 U.S.C. 971–977.

2. Section 1160.1 is amended by revising paragraph (a) as follows:

§ 1160.1 Purpose and scope.

(a) This part sets forth the exhibition indemnity procedures of the Federal Council on the Arts and Humanities under the Arts and Artifacts Indemnity Act (Pub. L. 94–158) as required by section 2(a)(2) of the Act.

* * * * *

§§ 1160.4–1160.11 [Redesignated as §§ 1160.5–1160.12]

3. Sections 1160.4 through 1160.11 are redesignated as §§ 1160.5 through 1160.12 and a new § 1160.4 is added to read as follows:

§ 1160.4 Eligibility.

An indemnity agreement made under this part shall cover:

(a) Eligible items from outside the United States while on exhibition in the United States;

(b) Eligible items from the United States while on exhibition outside this country, preferably when they are part of an exchange of exhibitions; and

(c) Eligible items from the United States while on exhibition in the United States, in connection with other eligible items from outside the United States which are integral to the exhibition as a whole.

Example 1: Museum A, an American art museum, is organizing a retrospective exhibition which will include more than 150 works of art by the Impressionist painter Auguste Renoir. The exhibition will present the full range of Renoir's production for the first time ever in an American museum. Museums B and C, large national museums in Paris and London, have agreed to lend 125 major works of art illustrating every aspect of Renoir's career. Museum A is also planning to include related works from other American public and private collections which have not been seen together since the artist's death in 1919. Museums D and E, major each coast American art museums, have agreed to lend 25 masterworks by Renoir. The exhibition will open in Chicago and travel to San Francisco and Washington.

Discussion: Example 1 is a straightforward application of the amended indemnity regulations. Under the old regulations, only the works of art from Museums B and C, the foreign museums, would have been eligible for indemnification. Under the proposed Regulations, the works of art from American museums and other public and private collections also would be eligible for indemnification. In determining whether to indemnify the entire exhibition, the Federal Council will evaluate the exhibition as a whole and whether the foreign loans are integral to the educational, cultural, historical or scientific significance of the exhibition. In this example, the Federal Council would likely approve indemnification of the entire exhibit.

Example 2: Museum A in Massachusetts is organizing an exhibition celebrating 250 Years of Decorative Arts in America, to be held in conjunction with the state's celebration of the millennium. Included among the objects to be borrowed from museums and historical societies in the United States are furniture, textiles, metalwork, ceramics, glass and jewelry, illustrating the best examples of American design from colonial times to the present. The curator traveled abroad recently and saw an exhibition of American quilts which have been acquired by a British decorative arts museum. He intends to borrow several of the quilts for the exhibition.

Discussion: Example 2 raises the question as to whether the American museum organizing the exhibition has included the British-owned American quilts merely to obtain insurance relief. In determining whether to indemnify the entire exhibition, the Federal Council will evaluate the exhibition as a whole and whether the foreign loans are integral to achieving its educational, cultural and historical purposes. Here, it is likely that the Federal Council will conclude that the foreign works are not an essential component of the exhibition. The Federal Council also may seek additional information from the applicant to determine whether the objectives of the exhibition could have been accomplished as satisfactorily by borrowing American quilts from U.S. collections. On these facts, the Federal Council in all likelihood would deny indemnification for the entire exhibition.

Example 3: Museum A, an American museum, is organizing an exhibition of the works of James Watkins, a nineteenth century American painter, focusing on his studies of human anatomy. Museum A has the foremost collection of preparatory drawings related to Watkins' major painting, ''The Surgeon and His Students.'' The painting is in the permanent collection of Museum B, located in the south of France, which has agreed to lend the painting for the exhibition. The exhibition will be shown at Museum B after the U.S. tour. American Universities, C and D, have also agreed to lend anatomical illustrations and drawings which show Watkins' development as a draughtsman. The exhibition and accompanying catalogue are

expected to shed new light on Watkins contributions to art and scientific history.

Discussion: Example 3 addresses the issue of whether the Federal Council will indemnify an exhibition even where the U.S. objects outnumber the foreign works. In determining whether to indemnify the entire exhibition, the Federal Council will evaluate the exhibition as a whole and the relationship of the foreign loans to the educational, cultural, historical and scientific significance of the exhibition. In this example, the exhibition promises to make import ant contributions not only to the history of art but also to the history of science. While there is only a single foreign work of art, it is clearly an essential component of the exhibition as a whole. The case for indemnification of the entire exhibition is further strengthened by the fact that a foreign masterpiece, which is closely related to the preparatory drawings and anatomical illustrations and drawings owned by American institutions, will be made available to the American public. Thus, the mere fact that the U.S. loans outnumber the foreign works will not in itself disqualify the entire exhibition for indemnification.

[FR Doc. 95–16548 Filed 7–5–95; 8:45 am]

BILLING CODE 7536–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 15

[DA 95–1415]

Request for Supplemental Comments

AGENCY: Federal Communications Commission.

ACTION: Supplemental proposed rule.

SUMMARY: The FCC has proposed, in ET Docket No. 94–124 (59 FR 61304, November 30, 1994), that certain frequency bands above 40 GHz be opened for commercial development and use. The Commission is seeking comments on the desirability and feasibility of harmonizing the FCC's proposal in ET Docket No. 94–124 and the European frequency allocation table. This action follows recent international meetings and is taken in order to obtain additional information for the record of ET Docket No. 94–124.

DATES: Comments may be filed on or before July 28, 1995. Replies may be filed on or before August 18, 1995.

FOR FURTHER INFORMATION CONTACT: Richard Engelman, Office of Engineering and Technology, (202) 776–1626.

SUPPLEMENTARY INFORMATION: A copy of the European frequency allocation table for frequencies above 40 GHz has been placed in the record of ET Docket No. 94–124. Copies of the information filed in ET Docket No. 94–124 are available from the FCC's copy contractor: International Transcription Service, Inc., (202) 857–3800. Copies of ERC Report 25, which contains the complete European frequency allocation table from 960 MHz to 105 GHz, may be obtained from the ERC's permanent European Radiocommunications Office, Holsteinsgade 63, DK–2100 Copenhagen, Denmark (telephone +45 35 43 24 42, fax +45 35 43 35 14). In addition, comments on the European frequency allocation table may be filed with the European Radiocommunications Office. A copy of a presentation from the Japanese government also has been inserted in the record of ET Docket 94–124. Parties interested in the Japanese standards may contact RCR at Bansui Bldg., 1–5–16, Toranomon, Minato-ku, Tokyo 105, Japan (telephone +81 3 3592 1101, fax +81 3 3592 1103).

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–16070 Filed 7–5–95; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Parts 25 and 87

[IB Docket No. 95–91; GEN Docket No. 90–357; PP–24; PP–85; PP–87; FCC 95–229]

Digital Audio Radio Service in the 2310–2360 MHz Frequency Band

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission has proposed rules and policies to establish service and licensing rules for the Digital Audio Radio Service in the 2310–2360 MHz frequency bands. We request comment on issues that include how many licenses should be awarded; how much spectrum each licensee should be assigned; how licensees should be selected if mutually exclusive applications are filed; whether applications already pending before the Commission should receive special consideration; how those licensees should be classified; whether licensees should be permitted to use some of their spectrum for non-DARS services; how satellite DARS will impact terrestrial radio broadcasting; and what rules should govern the operation of DARS transmissions to ensure service to the public and to prevent interference to competitors and other services.

DATES: Comments are due by September 15, 1995; reply comments are due by October 13, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rosalee Chiara, International Bureau, Satellite and Radiocommunication Division, Satellite Policy Branch, (202) 739–0730, or Ron Repasi, International Bureau, Satellite and Radiocommunication Division, Satellite Engineering Branch, (202) 739–0749.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making* in IB Docket No. 95–91; FCC 95–229, adopted June 14, 1995 and released June 15, 1995. The complete text of this Notice of Proposed Rule Making is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rule Making

In 1990, Satellite CD Radio (CD Radio) filed a Petition for Rulemaking to allocate spectrum for a Digital Audio Radio Service (DARS). In February 1992, the World Administrative Radio Conference (WARC 92) adopted international frequency allocations for satellite digital audio broadcasting. Domestic allocations were proposed in 1992 (*see* Notice of Proposed Rulemaking and Further Notice of Inquiry, 57 FR 57049 (Dec. 2, 1992)) and adopted in 1995 (*see* Amendment of the Commission's Rules with Regard to the Establishment and Regulation of New Digital Audio Radio Services, 60 FR 8309 (Feb. 14, 1995) (*Allocation Order*)).

In 1990, CD Radio filed an application to provide a digital audio radio service by satellite. Following the *Allocation NPRM*, the Commission established a December 15, 1992 cut-off date for applications proposing satellite DARS to be considered in conjunction with CD Radio's application. There remains a pool of four applicants consisting CD Radio, Primosphere Limited Partnership, Digital Satellite Broadcasting Corporation, and American Mobile Radio Corporation.

In the *Allocation Order*, we indicated that this rulemaking would be initiated to address the implementation of satellite DARS. We have, therefore, proposed rules and policies to establish service and licensing rules for the Digital Audio Radio Service in the 2310–2360 MHz frequency bands. We request comment on issues that include how many licenses should be awarded;